

Award No. 15379
Docket No. MW-14961

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement and understanding relating thereto when it failed and refused to fill the position of Road Carpenter while Road Carpenter R. V. Coleman was on vacation from June 2 to 21, 1963, inclusive. (Carrier's file E-41-103.)

(2) P. T. Kiser be paid the difference in his rate as First Class B&B Mechanic and that of Road Carpenter during the above period, which amounted to \$27.17.

(3) T. P. Chittom be allowed the difference in his rate of B&B Laborer (\$2.2608) and First Class B&B Mechanic (\$2.5128) for 120 hours, or \$30.24, inasmuch as he would have been stepped up to First Class B&B Mechanic when rates were adjusted in accordance with Rule 38.

(4) Virgil Massengill, furloughed B&B Laborer, be allowed pay at his straight time rate (\$2.2608) for 120 hours, or \$271.30, inasmuch as he would have been recalled to work to fill position left vacant by Mr. Chittom.

EMPLOYES' STATEMENT OF FACTS: The General Chairman addressed a letter to the Carrier's Chief Engineer, which reads:

"May 9, 1963

Mr. S. A. Cooper, Chief Engineer
Gulf, Mobile & Ohio Railroad Company
Mobile, Alabama

Dear Sir:

One of the B&B Men has told me that when the Road Carpenter and his Helper on Seniority District No. 3 take their vacations, their positions will not be filled.

"RULE 38.

**CLASSIFICATION OF BRIDGE AND
BUILDING GANG RATES**

The rates of pay on bridge and building gangs will be divided, as nearly as possible, equally among the men according to ability and seniority.

Odd men will be given the lower rates, but not more than one odd man to be carried on a single rate. An Assistant Foreman's rate will be considered as one of the highest rates.

All laborers on B&B gangs designated as 'Carpenter gangs' will be paid the highest labor rate applicable on the district where work is performed.

An Assistant Foreman will be assigned to all Bridge and Building gangs, regularly working more than eight (8) men exclusive of the Foreman.

Bridge and Building gangs without a carpenter will not be used to make other than minor repairs to roofed buildings or wood platforms attached thereto, and the temporary assignment of carpenters to such a gang will not cause it to be designated as a 'Carpenter Gang'."

OPINION OF BOARD: The central issue of this claim is whether Carrier had an obligation to fill the position of Road Carpenter during the 1963 vacation of Road Carpenter R. V. Coleman.

Organization contends that in a Letter of Understanding of December 20, 1961, Carrier and Brotherhood agreed to fill the position of Road Carpenter when that employe is on vacation.

Carrier denies the claim with the assertion that the Letter of Understanding applied to a special set of circumstances arising out of another claim and does not apply to the instant situation.

Our study of the record with regard to this Letter of Understanding reveals that on December 11, 1961, the Chief Engineer of Carrier and the General Chairman held a conference in which they discussed the case of a Road Carpenter Helper who claimed additional compensation for the days the Road Carpenter was on vacation because the Road Carpenter's position was not filled and the Road Carpenter's Helper was required to assume the responsibilities and duties of the two positions. The settlement was confirmed in a Letter of Understanding of December 20, 1961, in which the Chief Engineer wrote to the General Chairman:

"You agreed to withdraw the claim and the Company agreed to allow Mr. Walton the difference in pay received and that of Road Carpenter for the 15 days Mr. Beard was on vacation with the understanding that the Road Carpenter's position will be filled when the Road Carpenter is on vacation but the Road Carpenter Helper's position will not be filled when the Road Carpenter Helper is on vacation."

This Letter of Understanding concerns a situation in which the Road Carpenter's Helper remained on the position while the Road Carpenter was on vacation. The settlement provided that in this case where the Road Carpenter and Helper, members of a two man gang, were assigned vacations at different times and where the Helper was required to perform the services of a Road Carpenter, he was entitled to the higher rate of pay.

In the instant case, unlike the situation to which the Letter of Understanding refers, both members of the two man gang, Road Carpenter R. V. Coleman and the Road Carpenter's Helper R. L. Campbell, were assigned the same vacation period. They therefore performed no services during the vacation period nor did other employees assume their duties. There is no requirement in the current Agreement or in the Vacation Agreement that Carrier must fill a position during a vacation period.

Since the Letter of Understanding is not relevant to the factual situation under consideration, we hold the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1967.